

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Algonquin Gas Transmission, LLC

Docket No. CP05-383-000

ORDER ISSUING CERTIFICATE

(Issued March 16, 2007)

1. On June 13, 2005, Algonquin Gas Transmission, LLC (Algonquin)¹ filed an application, pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, for authorization to construct, install, own, and operate a 16.4-mile subsea pipeline (Pipeline Lateral). Algonquin's proposed Pipeline Lateral will provide a direct connection between the offshore liquefied natural gas (LNG) port (Northeast Gateway Deepwater Port) proposed by Northeast Gateway Energy Bridge, L.L.C. (Northeast Gateway) in federal waters in Massachusetts Bay and Algonquin's existing HubLine offshore system in Massachusetts Bay. Algonquin proposes the new facilities to provide up to 800,000 Dth/d of firm transportation service for Northeast Gateway's affiliate, Excelerate Energy Limited Partnership (Excelerate). Algonquin proposes incremental initial rates for service on the proposed Pipeline Lateral. For the reasons discussed below, we will grant Algonquin's requested certificate authority, subject to appropriate conditions.

¹ Algonquin, an affiliate of Duke Energy Gas Transmission, owns and operates a natural gas pipeline system extending from points near Lambertville and Hanover, New Jersey, through the states of New Jersey, New York, Connecticut, Rhode Island, and Massachusetts to points near the Boston area.

Background and Proposal

2. On June 13, 2005, Northeast Gateway submitted in Docket No. USCG-2005-22219 an application to the U. S. Coast Guard and the U. S. Maritime Administration (MARAD) seeking a federal license under the Deepwater Port Act of 1974 (DPLA) to construct the Northeast Gateway Deepwater Port for the importation and regasification of liquefied natural gas (LNG) in Massachusetts Bay.² Simultaneously, Algonquin filed its application in this proceeding proposing its Pipeline Lateral project to interconnect with Northeast Gateway's proposed deepwater port.

3. Algonquin's proposed Pipeline Lateral will consist of 16.4 miles of 24-inch diameter pipeline with a maximum allowable operating pressure (MAOP) of 1,440 pounds per square inch, extending from Algonquin's existing HubLine offshore system in Massachusetts Bay to a location approximately 13 miles south of the city of Gloucester, Massachusetts in federal waters approximately 270 to 290 feet in depth. The Pipeline Lateral will interconnect with the HubLine in waters approximately three miles east of Marblehead Neck, Marblehead, Massachusetts (MP 0.0) and terminate near the Northeast Port at MP 16.4. Algonquin states that it also will need to make minor

² Pursuant to the DPWA, as amended, 33 U.S.C. §§ 1501-1524 (2006), the Secretary of Transportation has exclusive jurisdiction over the licensing, ownership, construction and operation of deepwater ports. The DPWA defines a deepwater port as "any fixed or floating manmade structure . . . or any group of such structures, that are located beyond the state seaward boundaries and that are used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to any state," *id.* at § 1502(9)(A), and includes, "all components and equipment, including pipelines, pumping stations, service platforms, buoys, mooring lines, and similar facilities to the extent they are located seaward of the high water mark." *Id.* at § 1502(9)(B). The Secretary of Transportation delegated the responsibility to license deepwater ports to the Maritime Administrator, with the Coast Guard and MARAD sharing responsibility for the processing of applications for such licenses. On February 7, 2007, the Maritime Administrator issued a decision to grant Northwest Gateway a license under the DWPA, provided certain conditions are met. As pertinent here and discussed below in the section of this order addressing environmental matters, one of the conditions of the Maritime Administrator's decision is that Northeast Gateway address concerns raised by the National Oceanic and Atmospheric Administration which recommends that only one deepwater port in Massachusetts Bay be approved and which raises issues relating to potential liabilities for harm to the Stellwagen Bank National Marine Sanctuary.

modifications to existing above ground facilities at two meter stations in Salem and Weymouth, Massachusetts.³

4. Algonquin's proposed Pipeline Lateral would have capacity of 800,000 Dth/d to receive regasified LNG from Northeast Gateway's deepwater port. Algonquin proposes an incremental rate for firm transportation service on the Pipeline Lateral. Firm service on the proposed Pipeline Lateral would be provided under Algonquin's existing Rate Schedule AFT-CL for firm lateral services, and the incremental rate for firm service on the proposed Pipeline Lateral would be set forth in that rate schedule. Interruptible service on the proposed Pipeline Lateral would be provided under Algonquin's existing Rate Schedule AIT-2 for interruptible lateral services, and the incremental rate for interruptible service on the proposed Pipeline Lateral would be set forth in that rate schedule.

5. Algonquin's proposed incremental reservation rate under Rate Schedule AFT-CL for firm service on the Pipeline Lateral is \$4.3449 per Dth per month (or \$0.1428 on a 100 percent load factor basis). Algonquin's proposed incremental rate under Rate Schedule AIT-2 for interruptible service on the Pipeline Lateral is \$0.1428 per Dth, based on a 100% load factor of the incremental firm rate.⁴ Algonquin states that its proposed initial incremental rates are based on an estimated cost of facilities of \$179,675,500.

6. On February 14, 2005, Algonquin entered into a precedent agreement with Northeast Gateway's affiliate, Excelerate, for firm service of up to 800,000 Dth/d, the full capacity of the Pipeline Lateral. The service is to be provided at a negotiated rate. Algonquin states that prior to commencement of service for Excelerate, and in accordance with the Commission's Negotiated Rate Policy Statement,⁵ it will file either

³ At the Salem Meter Station, Algonquin will install a 10-foot x 15-foot fiberglass meter building; add an 8-foot section to an existing concrete building; remove and reverse a ultrasonic meter and add one new ultrasonic meter run; and install a chromatograph. At the Weymouth Meter Station, Algonquin will install a 16-foot x 21-foot concrete meter building, a gas heater, a chromatograph, ultrasonic meters, a scrubber, and a pressure control valve.

⁴ Algonquin has designed the proposed initial incremental rates using the cost-of-service factors underlying its current rates approved in Docket No. RP99-262. 87 FERC ¶ 61,008 (1999).

⁵ Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 74 FERC ¶ 61,076, reh'g and clarification denied, 75 FERC ¶ 61,024, reh'g denied, 75 FERC ¶ 61,066 (1996); petition for review denied, Burlington Resources Oil & Gas Co. v. FERC, Nos. 96-1160, et al., U.S. App. Lexis 20697 (D.C. Cir. July 20, 1998). Modification of Negotiated Rate Policy, 104 FERC ¶ 61,134 (2003), reh'g pending.

the negotiated rate agreement or numbered tariff sheets stating the name of the shipper paying the negotiated rate, the negotiated rates, the applicable receipt and delivery points, and the volume to be transported. Algonquin states that it will maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges, and revenues associated with the negotiated rates in sufficient detail so that they can be identified in any future NGA section 4 rate case.

Interventions

7. Notice of Algonquin's application was published in the *Federal Register* on June 30, 2005 (70 Fed. Reg. 37,801). Excelsior, Hess LNG Trading LLC, Maritimes & Northeast Pipeline, L.L.C., Massachusetts Energy Facilities Siting Board (Massachusetts Siting Board), Calpine Corporation, Distrigas of Massachusetts LLC, Salmon Resources Ltd., Shell NA LNG LLC (Shell), Anadarko Petroleum Corporation, Weavers Cove Energy, LLC, ExxonMobil Gas & Power Marketing Company, Virginia Power Energy Marketing, Inc. (Virginia Energy Marketing), Neptune LNG LLC (Neptune), KeySpan Delivery Companies (KeySpan), the New England Local Distribution Companies (NE LDCs),⁶ Consolidated Edison Company of New York, Inc. (Con Ed) and Orange and Rockland Utilities, Inc. (Orange & Rockland), and Northeast Energy Associates filed timely motions to intervene.⁷

8. BP Energy Company filed an unopposed motion to intervene out of time. The Commission finds that granting this late-filed motion to intervene will not delay, disrupt, or otherwise prejudice this proceeding, or place an additional burden on existing parties. Therefore, for good cause shown, we will grant BP Energy Company's late-filed motions to intervene.⁸

9. Virginia Energy Marketing, Neptune, KeySpan, the NE LDCs and Northeast Energy Associates filed comments with their motions to intervene. ConEd's pleading included a limited protest.

⁶ NE LDCs consist of Bay State Gas Company, Connecticut Natural Gas Corporation, New England Gas Company, Northern Utilities, Inc., City of Norwich, Department of Public Utilities, NSTAR Gas Company, The Southern Connecticut Gas Company, and Yankee Gas Services Company.

⁷ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(a) (2006).

⁸ 18 C.F.R. § 385.214(d) (2006).

10. On July 29, 2005, Algonquin filed an answer responding to the comments and Con Ed's limited protest. Although the Commission's Rules of Practice and Procedure allow answers to comments,⁹ our rules prohibit the filing of answers to protests.¹⁰ However, we may, for good cause shown, waive a rule.¹¹ We find good cause to do so in this instance since admitting Algonquin's answer will not cause undue delay or unfairly prejudice any party and will ensure a complete, accurate and fully argued record in this proceeding.

11. A description of the issues raised in the comments and limited protest follows. The concerns raised in the comments and protest are addressed in the discussion section of this order.

Gas Quality and Interchangeability

12. KeySpan, Virginia Energy Marketing, NE LDCs, Northeast Energy Associates and Shell are concerned with the quality and interchangeability of the regasified LNG that Algonquin's proposed Pipeline Lateral will bring into its system. These parties assert that Algonquin should be required to establish tariff provisions setting forth gas quality standards adequate to ensure that existing customers are not adversely affected by its proposal. They believe Algonquin's tariff should include gas quality and interchangeability standards consistent with the White Papers submitted by NGC+ in Docket No. PL04-3.¹² KeySpan requests that the Commission establish procedures to enable Algonquin, its customers, and other affected parties to begin the process of developing acceptable gas quality and interchangeability parameters to be included in its tariff, and that such process be completed before the Commission issues a final order in this proceeding. Northeast Energy Associates asks that the Commission convene a technical conference to address gas quality issues and require that Algonquin develop gas quality and interchangeability standards in order to maintain existing service levels.

⁹ 18 C.F.R. § 385.213(a)(3) (2006).

¹⁰ 18 C.F.R. § 385.213(a)(2) (2006).

¹¹ *See* 18 C.F.R. § 385.101(e) (2006).

¹² NGC+ Interchangeability Work Group's Report on Natural Gas Interchangeability and Non-Combustion End Use and Report on Liquid Hydrocarbon Drop Out in Natural Gas Infrastructure. The Natural Gas Council (NGC) is an organization made up of the representatives of the trade associations of the different sectors of the natural gas industry, such as the producers, pipelines, and local distribution companies. NGC has worked with by representatives of other industry segments ("NGC+") to develop consensus documents addressing natural gas quality and interchangeability.

13. In its answer, Algonquin contends that Northeast Energy Associates' comments do not raise factual issues concerning the Algonquin system that require a technical conference. Algonquin states that as a member of the Interstate Natural Gas Association of America (INGAA), it was an active participant in the collaborative process culminating in the publishing of the White Papers submitted by NGC+ in Docket No. PL03-3. However, according to Algonquin, the White Papers do not address all of the issues relating to gas interchangeability and quality, nor do they address the numerous policy related issues or all of the technical issues necessary for implementation of commercial operations, and that further research, industry input and analyses are required.

14. Algonquin states that it is coordinating with its customers, and will be scheduling additional meetings to discuss the customers' concerns with respect to the technical impacts of LNG from the Pipeline Lateral. Algonquin represents that with this input, it will work with its customers, Northeast Gateway, and NGC+ to resolve technical and policy issues for the satisfactory implementation of commercial operations relating to the Pipeline Lateral. Therefore, states Algonquin, it would be premature to schedule a technical conference or institute procedures before discussions are complete.

Neptune Alternative

15. Neptune states in its comments that it too has proposed offshore LNG docking and offloading facilities and a subsea pipeline in Massachusetts Bay to interconnect with Algonquin's HubLine pipeline. Neptune contends that its project mirrors the Northeast Gateway/Algonquin project with regard to design and location. However, Neptune's interconnecting pipeline and offshore LNG facilities are both being assessed by MARAD and the Coast Guard under the DWPA. Neptune asserts that the Commission should consider the feasibility of a joint pipeline, as it did in 1996 leading to authorization of the construction of pipeline facilities jointly owned by Portland Natural Gas Transmission System and Maritimes & Northeast Pipeline, L.L.C. If the Northeast Gateway/Algonquin and the Neptune projects are considered independent of each other, Neptune contends that its pipeline will have significantly fewer environmental impacts.¹³

16. Additionally, on January 30, 2007, Neptune filed a letter raising points in support of its claim that the Commission should not approve Algonquin's application at this time or should include specific conditions on any certificate issued to Algonquin. Subsequently, on February 20, 2007, Neptune filed a letter requesting that the Commission consider only the first point raised in Neptune's January 30 letter, which is its assertion that when Massachusetts Governor Romney approved both the Neptune and Northeast Gateway deepwater LNG port projects, he also executed a memorandum of

¹³ This claim is reasserted in Neptune's January 30, 2007 letter and later withdrawn according to Neptune's February 20, 2007 letter.

understanding with each project sponsor. Both memoranda of understanding contain provisions that the respective party must “make diligent efforts to construct that portion of its pipeline between Milepost (MP) 0.0 and approximately MP 8.0 in a manner that will not preclude construction of a second gas pipeline ... in a manner not substantially more complicated or expensive than that required to construct the first pipeline ...” Neptune contends that Algonquin has not yet shown with necessary specificity that it can comply with this requirement if it builds its facilities first. Moreover, in the event Neptune builds its pipeline first, Neptune contends that Algonquin could not build its facilities on its proposed route. Neptune requests that the Commission condition Algonquin’s certificate to require that Algonquin’s final route selection for its Pipeline Lateral satisfy the above referenced MOU provision.

Interruptible Service on the Pipeline Lateral

17. Con Ed’s protest is limited to Algonquin’s proposal that interruptible service on the Pipeline Lateral would be performed under its Rate Schedule AIT-2. According to Con Ed, Rate Schedule AIT-2 was created to allow Algonquin to segregate interruptible service revenues from its Brayton Point Lateral and Manchester Street Lateral when firm service contracts were terminated as a result of a bankruptcy proceeding. According to Con Ed, revenues under Rate Schedule AIT-2 can never give rise to credits to Algonquin’s system customers, whereas revenues under Rate Schedule AIT-1, covering all other interruptible revenues, may result in credits to Algonquin’s customers under Section 41.1(c)(1) of Algonquin's tariff's General Terms and Conditions (GT&C). Con Ed asserts that Algonquin has not explained why Pipeline Lateral project revenues should not be treated in the same manner under GT&C Section 4.1(c) as all other non-Brayton Point Lateral and non-Manchester Street Lateral interruptible revenues.

18. Algonquin responds that Con Ed’s limited protest seeks a windfall through crediting of interruptible transportation revenues from facilities for which Con Ed will not contribute to the cost of service. Algonquin emphasizes that it is proposing to construct the Pipeline Lateral and to provide fully subscribed firm transportation service to a single customer, Excelerate, pursuant to Rate Schedule AFT-CL, from a receipt point at Northeast Gateway's LNG port to a delivery point at a new tie-in with Algonquin’s existing pipeline facilities. Since Con Ed will bear none of the costs for service on the Pipeline Lateral, Algonquin asserts that Con Ed has no basis for seeking revenue credits with respect to interruptible services provided by the Pipeline Lateral.

Operational Issues

19. As described above, Algonquin has a precedent agreement to provide up to 800,000 Dth/d of firm service for Excelerate on the proposed Pipeline Lateral from its beginning at Northeast Gateway's LNG port to its interconnection with Algonquin's existing HubLine. KeySpan requests clarification whether additional facilities, not proposed in Algonquin's instant application, will be necessary to increase capacity on

Algonquin's system downstream of the interconnection between the proposed Pipeline Lateral and the HubLine. If so, Keyspan requests that the Commission condition approval of the Pipeline Lateral project on Algonquin's agreeing not to ship more than 400,000 Dth/day on the Pipeline Lateral until it provides the Commission and its firm customers assurance that transporting greater volumes on the Pipeline Lateral does not create the potential for adverse impacts on other firm customers if there is a sudden loss of pressure or gas supply on the Pipeline Lateral.

20. In response, Algonquin clarifies that it is not planning to construct facilities to increase capacity downstream of the Pipeline Line. Algonquin states that Excelerate will rely on obtaining downstream capacity via capacity release or interruptible service. In any event, Algonquin states a sudden loss of pressure or gas supply on the Pipeline Lateral would not adversely affect service to customers other than those customers whose supplies include regasified LNG coming from Northeast Gateway's port, since Algonquin would not be required to continue deliveries of natural gas on behalf of such customers to the extent that Northeast Gateway is unable to deliver gas into the Pipeline Lateral.

Discussion

21. The proposed facilities will be used to provide transportation of natural gas in interstate commerce. Therefore, the construction and operation of the facilities will be subject to the Commission's jurisdiction under section 7(c) of the NGA.

Application of the Certificate Policy Statement

22. On September 15, 1999, the Commission issued its Certificate Policy Statement to provide guidance as to how proposals for certificating new construction will be evaluated.¹⁴ That Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. Specifically, the Certificate Policy Statement explains that the Commission, in deciding whether to authorize the construction of new pipeline facilities, balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment and the unneeded exercise of eminent domain in evaluating new pipeline construction.

¹⁴*Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000).

23. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from the existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of a new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission then proceed to complete the environmental analysis where other interests are considered.

24. As noted above, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Algonquin has a precedent agreement with Excelerate for firm service of up to 800,000 Dth/d, the full capacity of the Pipeline Lateral, for twenty-five years. Although Algonquin will provide service for Excelerate at a negotiated rate, the service will be under Algonquin's existing Rate Schedule AFT-CL and Algonquin has proposed incremental initial recourse rates that will be set forth in Rate Schedule AFT-CL for service on the Pipeline Line. The proposed initial incremental recourse rates are based on the costs of placing the project into service. Therefore, existing customers will not subsidize the project.

25. As described above, several parties raised concerns regarding the quality and interchangeability of the regasified LNG that Algonquin's proposed Pipeline Lateral will bring into its system. These parties asserted that Algonquin should be required to establish tariff provisions setting forth gas quality and interchangeability standards adequate to ensure that existing customers are not adversely affected by its proposal. Subsequent to the filing of these comments, Algonquin filed a letter on December 7, 2006, stating that it has held a number of collaborative discussion meetings with customers and other interested stakeholders, including meetings on February 2, March 7, April 7, May 4, and June 15, 2006, in the Boston area, as well as numerous conference calls, concerning gas quality and interchangeability issues associated with the Northeast Gateway/Pipeline Lateral project.

26. Algonquin further states that as a result of information developed in these discussions, a consultant was engaged to assess the impact on the various customers of changing fuel gas from natural gas to regasified LNG, and that Algonquin and the stakeholders met again on December 1, 2006, to discuss the consultant's preliminary findings and to provide additional input. Algonquin contemplates that all parties will meet again, and that Algonquin will be able to submit revised tariff sheets reflecting any

changes to its gas quality and interchangeability standards determined to be necessary as a result of this collaborative process on or before May 1, 2007.

27. Based on Algonquin's representations, we find that gas quality and interchangeability issues are being addressed as contemplated by the Commission, i.e., through a collaborative process that includes the affected stakeholders to resolve these issues in a manner consistent with the Commission's June 15, 2006 policy statement on gas quality and interchangeability to ensure there is no degradation of service to existing customers.¹⁵ It is premature to consider whether to order a technical conference or institute procedures, as requested by several parties, before discussions are complete.

28. As described above, KeySpan expresses concern that service to existing firm customers could be adversely affected if there is a sudden loss of pressure or gas supply at the interconnection between the Pipeline Lateral and Northeast Gateway's LNG port. In response, Algonquin acknowledges that Excelerate has not submitted a separate request for service downstream of the Pipeline Lateral on Algonquin's HubLine and, therefore, that Excelerate will have to rely on obtaining capacity via capacity release or interruptible service.¹⁶ However, Algonquin states that, should the Pipeline Lateral experience a sudden loss of pressure or gas supply, such an event would not adversely effect service to customers other than those customers who have contracted to receive supply from Northeast Gateway that is transported along the Pipeline Lateral. Keyspan has offered no evidence to support its speculation that a loss of pressure or gas supply on the proposed Pipeline Lateral could prevent Algonquin from managing its system so that it could still meet its firm service obligations to customers using downstream facilities.

29. Algonquin's proposed Pipeline Lateral will introduce high pressure gas at the eastern end of Algonquin's system allowing greater flexibility and operational capability by enhancing Algonquin's ability to manage operational or facility outages due to planned or unplanned maintenance and to mitigate capacity restrictions on the eastern end of the system. The high pressure at Algonquin's eastern end will benefit existing shippers by enhancing Algonquin's ability to maintain the system's hourly swing capabilities. Additionally, the Pipeline Lateral will also increase flexibility and reliability during times of high demand.

¹⁵ Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs, 115 FERC ¶ 61,325 (2006).

¹⁶ In this regard, Algonquin emphasizes that the Commission has authorized projects where upstream or downstream capacity arrangements have not been finalized. *Citing Questar Pipeline Co.*, 93 FERC ¶ 61,279 at pp. 61,933-34 (2000), *North Baja Pipeline LLC*, 95 FERC ¶ 61,259 (2001), and *Maritimes & Northeast, Pipeline, L.L.C.*, 80 FERC ¶61,136, at p. 61,475 (1997).

30. The Commission also finds that the Pipeline Lateral should serve to benefit other pipelines and their customers because it will transport new natural gas supplies into the interstate grid to meet the growing demand for natural gas in major U.S. markets. Since the Pipeline Lateral will provide natural gas users a new, direct access to significant supplies of natural gas, existing pipelines and their captive customer should also benefit by increasing competition among suppliers of natural gas in the region. The new supplies should foster natural gas price competition for energy consumers, and therefore mitigate price increases in the region. Additionally, since Algonquin's service to Excelerate represents new load, it will not replace current service provided by any other pipeline and, therefore, the proposal will have no adverse effect on such pipelines or their captive customers.

31. Although Algonquin has proposed incremental initial rates for the Pipeline Lateral, KeySpan emphasizes that Algonquin expressly reserves its right to seek rolled-in rate treatment in the future for its project costs. Therefore, Keyspan is concerned that Algonquin's request for acknowledgement of the Pipeline Lateral's system benefits, as discussed above, is an attempt to create an implied presumption supporting rolled-in rate treatment in a future rate case, notwithstanding that Algonquin has proposed incremental initial rates for the Pipeline Lateral and has not explicitly requested a finding in this certificate proceeding that would support rolled-in rate treatment.

32. Since Algonquin has proposed incremental initial rates for services on this facility, we do not need to consider in this certificate proceeding whether rolled-in rate treatment for the Pipeline Lateral's costs might be justified at some time in the future. If Algonquin seeks in the future to roll the Pipeline Lateral's costs into generally applicable rates, the extent to which benefits from the project might support such rate treatment can be assessed at that time. As this order does not establish a presumption supporting rolled-in rate treatment, Algonquin will have the burden of proof if it decides in the future to seek rolled-in rate treatment.

33. The Commission next considers whether there will be adverse effects of an economic nature on landowners or the communities through which a pipeline is routed. These effects are minimized for the Pipeline Lateral due to the fact that the pipeline will be constructed in territorial waters of the Town of Marblehead, the City of Salem, the City of Beverly, the Town of Manchester-by-the-Sea, as well as waters regulated by the Commonwealth of Massachusetts and the United States. The minor facility modifications to two of Algonquin's aboveground measurement facilities will be completed inside the existing fenced-in areas of those meter stations.

34. Based on the discussion above, we find that Algonquin's proposal for the Pipeline Lateral is consistent with the criteria set forth in the Certificate Policy Statement. Existing customers will not subsidize the project since the rates for service on the Pipeline Lateral will be incremental rates designed based on the costs of the Pipeline Lateral project and such costs will be included only in the rates paid by customers using

the Pipeline Lateral. The project will not result in a degradation of service for existing customers and will have no adverse effect on the captive customers of other pipelines. Finally, by routing most of the offshore pipeline in a manner that minimizes environmental impacts, Algonquin has minimized any adverse economic effects on landowners.

35. For all of these reasons, we find that construction of Algonquin's proposed Pipeline Lateral, as conditioned herein, is required by the public convenience and necessity.

Rate Proposal

We find that the initial incremental reservation rate under Rate Schedule AFT-CL of \$4.3449 per Dth per month is designed to recover the cost of service of the proposed lateral facilities, which was developed using Algonquin's cost of service factors approved in Docket No. RP99-262-000.¹⁷ The rate of return is 10.37 percent, the operation and maintenance expense factor is 2.8 percent and a factor for taxes other than income is 1.85 percent. Algonquin utilized an annual depreciation rate of 4.0 percent which is based on the life of the 25-year contract term; thus the costs of the project will be fully recovered from Excelerate over the life of the contract. Algonquin must file actual tariff sheets to place the rate into effect at least 60 days prior to commencement of service on the proposed facilities.¹⁸

36. Algonquin and Excelerate propose to enter into a negotiated rate agreement for service on the proposed facilities. While the Commission does not approve negotiated rate agreements in certificate proceedings,¹⁹ in order to comply with the Alternative Rate

¹⁷ Algonquin Gas Transmission Company, 87 FERC ¶61,008 (1999) (order approving revised tariff sheets filed by Algonquin under section 4 of the NGA to implement an offer of settlement reducing its transmission rates).

¹⁸ Algonquin did not file pro forma tariff sheet no. 609 with the appropriate modifications to include the revenue crediting treatment of the proposed lateral facilities. Algonquin must include this tariff sheet when it files actual tariff sheets to place the lateral facilities into effect.

¹⁹ See East Tennessee Natural Gas Co., 98 FERC ¶ 61,331 (2002); Texas Eastern Transmission Corp., 95 FERC ¶ 61,057, order on reh'g, 95 FERC ¶ 61,367 (2001); and Independence Pipeline Co., 91 FERC ¶ 61,102 and 92 FERC ¶ 61,022, order on reh'g and clarification, 92 FERC ¶ 61,367 (2000).

Policy Statement²⁰ and our decision in *NorAm Gas Transmission Co.*,²¹ we will direct Algonquin to file its negotiated rate contract or numbered tariff sheet at least 60 days prior to the commencement of service on the lateral facilities stating: (1) the exact legal name of the shipper; (2) the total charges (the negotiated rate and all applicable charges); (3) the receipt and delivery points; (4) the volumes of gas to be transported; (5) the applicable rate schedule for the service; (6) any formula upon which the negotiated rate is designed; and (7) a statement affirming that the negotiated rate contract does not deviate in any material respect from the form of service agreement in Algonquin's FERC Gas Tariffs. Algonquin must also disclose all consideration received that is associated with the agreement. Finally, Algonquin must also maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rate in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case.

37. Con Ed and Orange & Rockland contend that interruptible service on the Pipeline Lateral should be subject to Rate Schedule AIT-1 rather than Rate Schedule AIT-2, as proposed by Algonquin, so that interruptible service on the lateral will be subject to the AIT-1 revenue crediting mechanism rather than the AIT-2 mechanism. In its answer, Algonquin emphasizes that it has proposed incremental rates for services on the Pipeline Lateral and that Excelerate is the sole firm customer and has entered into a precedent agreement for all of the lateral's firm capacity. Since Con Ed and Orange & Rockland will bear none of the costs associated with the Pipeline Lateral, Algonquin argues that they have no basis for seeking revenue credits with respect to services provided on the Pipeline Lateral.

38. Rate Schedule AIT-2 was created in order to allow Algonquin to segregate interruptible service revenues associated with its Brayton Point and Manchester Street Laterals from the interruptible service revenues associated with Rate Schedule AIT-1 service.²² Currently, Rate Schedule AIT-1 applies to all service agreements under firm

²⁰ Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 74 FERC ¶ 61,076, reh'g and clarification denied, 75 FERC ¶ 61,024, reh'g denied, 75 FERC ¶ 61,066 (1996); petition for review denied, *Burlington Resources Oil & Gas Co. v. FERC*, Nos. 96-1160, et al., U.S. App. Lexis 20697 (D.C. Cir. July 20, 1998) (Alternative Rate Policy Statement).

²¹ *NorAm Gas Transmission Co.*, 77 FERC ¶ 61,011 (1996).

²² *Algonquin Gas Transmission Co.*, 105 FERC ¶ 61,180 (2003), order on compliance and rehearing 106 FERC 61,217 (2004), order granting motion to withdraw pleading, 107 FERC ¶ 61,173 (2004).

Part 284 transportation service, except for service agreements for service on the Brayton Point, Manchester Street and Canal Laterals under Rate Schedule AFT-CL.²³ Rate Schedules AIT-1 and AIT-2 differ in the crediting of interruptible revenues to firm customers. Revenues collected under Rate Schedule AIT-2 are credited to the service agreements for firm service on each respective lateral. For example, the credit for interruptible revenues under Rate Schedule AIT-2 attributable to service on the Manchester Street Lateral applies only to service agreements for firm service on the Manchester Street Lateral under Rate Schedule AFT-CL.

39. However, Rate Schedules AIT-1 and AIT-2 also differ in that service under AIT-1 is provided at a system-wide rate, while interruptible service on laterals under AIT-2 is provided at an incremental rate calculated separately for each lateral. In addition, service under Rate Schedule AIT-2 is limited to the respective lateral -- a shipper would need to contract separately for mainline service. The Commission will allow Algonquin to provide its interruptible services on the Pipeline Lateral under Rate Schedule AIT-2, as proposed. We believe that it is reasonable for interruptible service on this incrementally-priced discrete lateral to be similarly provided at an incremental rate.

Environmental Review

40. The Coast Guard is the lead agency for the environmental review of both the offshore LNG terminal for which Northeast Gateway has applied for a license from MARAD under the DWPA and the Pipeline Lateral for which Algonquin applied in this proceeding for an NGA certificate. The Commission is a cooperating agency for the review of the Pipeline Lateral and onshore meter station modifications, and is imposing conditions herein on the construction and operation of the Pipeline Lateral.

41. On May 19, 2006, the Coast Guard, as the lead federal agency, issued a draft environmental impact statement (EIS) addressing Algonquin's pipeline certificate application and Northeast Gateway's deepwater port license application. On October 27, 2006, the Coast Guard issued the final EIS. The draft and final EISs were mailed to federal, state, and local agencies, elected officials, Native American tribes, newspapers, public libraries, interveners in the Commission's proceeding on Algonquin's proposed Pipeline Lateral and other interested parties (i.e., landowners, other individuals, and environmental groups who provided scoping comments).

42. The Commission, the U.S. Army Corps of Engineers (COE), the U.S. Department of the Interior, Fish and Wildlife Service (FWS), the U.S. Department of Commerce's National Oceanographic and Atmospheric Administration (NOAA), the U.S. Environmental Protection Agency (EPA), the U.S. Department of the Interior's Minerals

²³ See Fourth Revised Sheet No. 609 of Algonquin's FERC Gas Tariff, Fifth Revised Volume No. 1.

Management Service (MMS), and the Massachusetts Executive Office of Environmental Affairs (Massachusetts Environmental Affairs) were cooperating agencies for the development of the final EIS.

43. The final EIS addresses the issues and concerns raised in response to the draft EIS. The final EIS also addresses geology and sediments; water resources; wetlands and vegetation; wildlife and aquatic resources; threatened, endangered and other special statutes species; land use, recreation, and visual resources; socioeconomics; transportation and traffic; cultural resources; air quality and noise; reliability and safety; cumulative impacts, and alternatives.

44. Environmental comments regarding the pipeline portion of the project were received on the final EIS from the Massachusetts Office of Coastal Zone Management (Massachusetts Coastal Zone Management), the Massachusetts Department of Environmental Protection (Massachusetts Environmental Protection), the New England Fishery Management Council, the Commonwealth of Massachusetts, Division of Marine Fisheries (Massachusetts Marine Fisheries); the Massachusetts Department of Conservation and Recreation (Massachusetts Conservation and Recreation); the Conservation Law Foundation, the Massachusetts Siting Board and NOAA.

45. Comments from Massachusetts Environmental Protection focused on impacts from pipeline construction including: cumulative impacts, burial depth, construction mitigation measures and project oversight, post-construction monitoring of benthic impacts and habitat recovery, and mitigation and compensation related to the long term operation of the port and the pipeline. Under its Clean Water Act, section 401 Water Quality Certificate review permit, Massachusetts Environmental Protection would also require water quality testing for turbidity related impacts and an unanticipated discoveries plan, consistent with historical preservation agencies' guidelines, if any cultural resources are discovered. These items can be further developed and addressed in Massachusetts Environmental Protection's section 401 permitting process which must be completed prior to the Commission's staff granting clearance for Algonquin to commence construction activities.

46. Comments were received concerning mitigation and monitoring of construction of the project. NOAA provided comments concerning impacts on benthic resources and biological monitoring, while Massachusetts Marine Fisheries suggested that the severity of potential impacts were underestimated and would require additional monitoring studies to remedy. During its section 401 Water Quality Certificate review, Massachusetts Environmental Protection indicated that it would require "real-time" construction monitoring to serve as the basis for an exchange of information between the applicant and a standing committee, to include representatives of regulatory and resource agencies. Massachusetts Coastal Zone Management similarly recommended the establishment of an interagency technical workgroup to review construction plans. Massachusetts Environmental Protection also would request the employment of a qualified independent

observer to report to it and the standing committee during in-state waters construction and monitor the project's compliance with permit conditions.

47. A technical working group of agencies, including Massachusetts Marine Fisheries, Massachusetts Coastal Zone Management, Massachusetts Environmental Protection and NOAA, has been actively involved in the development of the monitoring and mitigation plan and will continue to be consulted for the final Construction Contingency Plan and Reporting Procedures being completed by the applicant. The Environmental Monitoring Program described in the final EIS will continue to be developed and finalized during the permitting process to reflect the ongoing discussions between Algonquin and the resource and regulatory agencies in accordance with Environmental Condition No. 16 in the Appendix to this order.

48. Massachusetts Conservation and Recreation expressed concerns over potential impacts to ocean sanctuaries under their jurisdiction. In particular, it was concerned about the potentially greater impacts of two separate pipelines being constructed through the sanctuaries to serve the Northeast Gateway and the Neptune deepwater LNG ports compared to the impacts of a single combined pipeline and about the selection of the proposed route over a shorter alternative route to a different buoy location. The Massachusetts Siting Board commented that there was a need for the Northeast Gateway project. However, it states that the Commission should determine in consultation with the Governor's office and MARAD whether to approve Algonquin's proposed separate Pipeline Lateral to serve the Northeast Gateway LNG port or find that a single pipeline should be constructed to transport regasified LNG from both the Northeast Gateway port and the Neptune port.

49. The final EIS analyzed the feasibility of constructing a single larger diameter pipeline, the availability of construction materials and equipment, the lengthened construction schedule for a single, larger diameter pipeline, and the jurisdictional and operational feasibility of a combined pipeline, including the increased cost of construction, and concluded that a single, larger diameter pipeline would not meet the applicants' objectives. The final EIS also indicates that construction of a single pipeline would disturb more seafloor, and would require additional passes of the pipelaying plow and construction time would be three months longer than that for either the Pipeline Lateral or the Neptune pipeline separately. The environmental advantages of a single larger diameter pipeline would only be realized only if both of the proposed smaller pipelines are built. The final EIS also reviewed the pipeline route alternatives, including Alternative Route No. 1 recommended by Massachusetts Conservation and Recommendation. Alternate Route No. 1 does not connect to Northeast Gateway's proposed port buoy location and does not provide a clear advantage over the proposed pipeline route.

50. Moreover, we do not agree with Neptune's claim in its January 30, 2007 letter that Algonquin has not yet shown "with necessary specificity" that it could build its Pipeline

Lateral in such a manner that it will not preclude construction of Neptune's pipeline. We note that Neptune and Algonquin have each represented to the Governor of Massachusetts in their respective memoranda of understanding that based on currently available information each would be able to construct its proposed pipeline facilities in such a manner that the other pipeline could be constructed later "in a manner not substantially more complicated or expensive than that required to construct the first pipeline (assuming the second pipeline had been constructed at the same time and under the same conditions as the first)."²⁴ We will, however, require that Algonquin cannot commence construction of the Pipeline Lateral facilities until a license authorizing the Northeast Gateway's LNG port under the DWPA has been issued to, and accepted by, Northeast Gateway.

51. Massachusetts Conservation and Recreation also recommended that mitigation for impacts to the sanctuaries include funding of infrastructure projects at the Boston Harbor Islands National Park. Massachusetts Marine Fisheries and NOAA also suggested the development of a compensation plan. Massachusetts Environmental Affairs replied in its "Certificate of the Secretary of Environmental Affairs on the Final Environmental Impact Report" that the applicants have committed to providing the requested funding as a part of the comprehensive mitigation package.

52. Massachusetts Coastal Zone Management commented on seafloor characterization, Ocean Sanctuaries Act compliance, water quality, mitigation, federal consistency review, agency consultations, and armoring and habitat conversion. Massachusetts Coastal Zone Management requested that additional information on the characterizations of the seafloor, compliance with the Ocean Sanctuaries Act, and spill prevention measures be provided to the permitting agencies for federal consistency review. The issues raised by Massachusetts Coastal Zone Management will be resolved during the completion of the federal consistency review. Environmental Condition No. 14 in the Appendix to this order provides that Algonquin shall not begin construction until it files with the Commission a copy of a consistency determination issued by Massachusetts Coastal Zone Management.

53. Comments from Massachusetts Coastal Zone Management suggest that the conversion of bottom habitat should be avoided wherever possible or, if unavoidable, should be minimized and mitigated. It would recommend a second pass of the backfill plow to achieve proper depth of burial before recommending the use of armoring because of the conversion to hard-bottom associated with armoring. Where armoring would be necessary, Massachusetts Coastal Zone Management recommended that Massachusetts Marine Fisheries be consulted to determine if protective material designs could be developed and implemented to function as artificial reefs. NOAA suggested that benthic resources could be further protected by developing all practicable means of minimizing

²⁴ Paragraph 10 of the respective MOAs.

harm, including reaching the minimal depth of burial through the use of a second plow pass rather than utilizing armoring, and through the use of biological monitoring. Comments from the New England Fisheries Management Council also expressed concern about impacts to the fishing industry and loss of natural habitat where concrete mats would be installed. They recommended the avoidance of using rock to achieve the minimum pipeline burial depth and agreed with comments made by the NOAA National Marine Fisheries Service's northeast Regional Office. The discussion on the use of concrete or rock is ongoing during the development of the Construction Contingency Plan and Reporting Procedures currently being developed by the applicant through consultation with the appropriate agencies and would be resolved prior to the commencement of any construction activities, as required by Environmental Condition No. 16 in the Appendix to this order.

54. Massachusetts Marine Fisheries requested that all work be conducted between January and March to minimize impacts to American lobster. NOAA recommended time of year restrictions from January through July. We note that a seven-month window would be required to complete construction activities and it is not possible to select a single continuous seven-month window that optimizes protection of all species. There is no single window that would be entirely protective of the American lobster, since adult lobster are most prevalent during the fall (October and November) and the spring (April and May) and the larvae are most common from June through August. We concur that the applicant's proposed construction window of May to November would minimize or avoid impacts on most critically imperiled species better than any other time of the year.

55. NOAA provided comments regarding the Stellwagen Bank National Marine Sanctuary and compliance with the National Marine Sanctuaries Act.²⁵ NOAA's issues relevant to construction of the pipeline are related to underwater noise and vessel strikes of marine mammals. Noise impacts from pipeline construction are considered short-term temporary impacts and would not necessitate mitigation measures to the same level as the noise associated with port operation. Consultation with NOAA regarding sanctuaries under the National Marine Sanctuaries Act and regarding marine mammal impacts under

²⁵ As noted above, *supra* n. 2, on February 7, 2007, the Maritime Administrator issued the Secretary's Decision on the Deepwater Port License Application of Northeast Gateway Energy Bridge LLC in Docket No. USCG-2005-22219. The Maritime Administrator decided that it will be appropriate to issue a license to Northeast Gateway under the Deep Water Port Act, provided certain conditions are met, including conditions to preserve and enhance the environment. Because NOAA had recommended that only one deepwater port application for a deepwater port in Massachusetts Bay be approved, the Maritime Administrator's decision provides that, prior to issuance of a license, Northeast Gateway must address concerns raised by NOAA concerning potential liabilities for harm to the Stellwagen Bank National Marine Sanctuary.

the Endangered Species Act and the Marine Mammal Protection Act must be completed prior to construction. The Coast Guard and NOAA have been working on a vessel strike mitigation plan for construction and operation of the facilities which will be completed to institute any necessary protective measures prior to Algonquin's being cleared to commence construction activities, as provided by Environmental Condition No. 16 which requires Algonquin to file with the Commission prior to construction a detailed monitoring and mitigation plan and documentation of all consultation with resource management agencies.

56. The Conservation Law Foundation offered comments on developing the final mitigation and compensation plan regarding anchoring, sediment contamination, monitoring and enforcement, pipeline depth and burial, and marine mammal impacts. Again, these items are currently being addressed through consultation with the appropriate agencies, including consultation with NOAA regarding vessel strike mitigation, for the development of the final plan that Algonquin is required to complete and file pursuant to Environmental Condition No. 16.

57. The Commission has reviewed the information and analysis contained in the final EIS regarding the potential environmental effect of the project. Based on our consideration of this information, we agree with the conclusions presented in the final EIS and find that Algonquin's proposed Pipeline Lateral to serve Northeast Gateway's LNG port is environmentally acceptable if the Pipeline Lateral is constructed and operated in accordance with the recommended environmental mitigation measures in the Appendix to this order. Thus, we are including the environmental mitigation measures recommended in the final EIS as conditions to the authorization granted by this order for Algonquin's Pipeline Lateral.

58. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. This does not mean, however, that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.

Conclusion

59. At a hearing held on March 15, 2007, the Commission, on its own motion, received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Algonquin to construct and operate a 16.4-mile subsea pipeline, as more fully described in the application and in this order.

(B) Algonquin's proposed initial recourse rates under Rate Schedule AFT-CL and AIT-2 are approved.

(C) Algonquin shall not commence construction of the Pipeline Lateral facilities until a license authorizing the Northeast Gateway Deepwater Port under the Deep Water Port Act has been issued to, and accepted by, Northeast Gateway. Algonquin shall construct and place into operation the facilities authorized herein in coordination with the construction schedule of the Northeast Gateway Port such that the construction schedules for both facilities are completed at the same approximate time and prior to the in-service date, provided that Algonquin's authorization to complete construction and place its facilities into operation shall not exceed three years from the date of this order.

(D) Algonquin shall file, not less than thirty days, nor more than sixty days, prior to its proposed effective date, tariff sheets consistent with its pro forma tariff sheets.

(E) Algonquin shall comply with the Commission's Alternative Rates Policy Statement, as modified by the Modification of Negotiated Rate Policy, to the extent it proposes to charge its customers for this project negotiated rates, as more particularly discussed herein. (F) The certificate is conditioned on Algonquin's compliance with the Natural Gas Act and all relevant Commission regulations, in particular with Part 154 and paragraphs (a), (b), (c) (e), and (f) of section 157.20 of the regulations.

(F) Algonquin shall have executed contracts equivalent to the volumes represented by its precedent agreement with Excelerate prior to commencing construction.

(G) The certificate issued in paragraph (A) above is conditioned on Algonquin's compliance with the environmental conditions included in the Appendix to this order.

(H) Algonquin shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of an environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Algonquin. Algonquin shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(I) BP Energy Company's motion to intervene out of time is granted and Algonquin's answer to protest is accepted. Northeast Energy Associates' request for a technical conference to address gas quality issues is denied.

By the Commission.

(S E A L)

Philis P. Posey,
Acting Secretary

APPENDIX

Environmental Conditions

1. Algonquin shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EIS, unless modified by this Order. Algonquin must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority should allow:
 - a. the modification of conditions of this Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Algonquin shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EIS and as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Algonquin shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Algonquin's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Algonquin's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Algonquin shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by the *Upland Erosion Control, Revegetation, and Maintenance Plan*, minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of this certificate and before construction begins**, Algonquin shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Algonquin will implement the mitigation measures required by this Order. Algonquin must file revisions to the plan as schedules change. The plan shall identify:

- a. how Algonquin will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - b. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
 - d. the training and instructions Algonquin will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - e. the company personnel (if known) and specific portion of Algonquin 's organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) Algonquin will follow if noncompliance occurs; and
 - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the mitigation training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Algonquin shall employ at least one environmental inspector per construction spread. The environmental inspector shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by this Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 5 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Algonquin shall file updated status reports prepared by the environmental inspector with the Secretary, the Massachusetts Department of Environmental

Protection, and the Minerals Management Service on a **biweekly** basis **until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

- a. the current construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Algonquin from other federal, state or local permitting agencies concerning instances of noncompliance, and Algonquin's response.
9. Algonquin must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, Algonquin shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Algonquin has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

11. Algonquin shall not begin construction activities **until**:
 - a. FERC staff receives comments from the National Marine Fisheries Service (NMFS) regarding the proposed action;
 - b. the staff completes formal consultation with the NMFS, if required; and
 - c. Algonquin has received written notification from the Director of OEP that construction or use of mitigation may begin.

12. **Prior to construction**, Northeast Gateway (NEG) shall provide to the U.S. Coast Guard (Coast Guard) staff for review and approval a full air quality analysis identifying all mitigation requirements required to demonstrate conformity and submit detailed information documenting how the project would demonstrate conformance with the applicable SIP in accordance with Title 40 CFR Part 51.858. The documentation should address each regulatory criteria listed in Part 51.858; provide a detailed explanation as to whether or not the project would meet each requirement; and for each criteria being satisfied, provide all supporting information on how the project would comply. Should any element of the project change substantially, NEG should resubmit the aforementioned information so that Coast Guard staff may determine the Conformity of the revised action.

13. **Prior to construction**, Algonquin shall file documentation with the Secretary of the Commission that confirms Coast Guard staff's review and approval of the project's air quality analysis and identifies all mitigation requirements required to demonstrate conformity with Title 40 CFR Part 51.858.

14. Algonquin shall not begin construction of the project until it files with the Secretary of the Commission a copy of the determination of consistency with the Coastal Zone Management Plan issued by the Massachusetts Office of Coastal Zone Management.

15. Algonquin shall prepare as-built construction plans for the Pipeline Lateral that include the details of where the pipeline would be laid on the ocean floor and protected with concrete mats. To minimize the potential for the pipeline to become an obstacle for ground fishing gear, these plans shall be made available to the Coast Guard and other jurisdictional agencies for dissemination to the commercial fishing industry.

16. Algonquin shall file with the Secretary of the Commission, **prior to construction**, a detailed Monitoring and Mitigation Plan regarding impacts associated with construction of the Pipeline Lateral, including documentation of all consultation with jurisdictional resource management agencies. The Monitoring and Mitigation Plan shall include:

- a. appropriate pipeline burial depth and cover criteria;
 - b. any measures to minimize impacts to migrating lobsters from pipeline trenching and backfilling;
 - c. mitigation and monitoring of egg and fish mortality;
 - d. water quality monitoring; and
 - e. installation and operation of an array of autonomous recording units to monitor and evaluate underwater sound output from the NEG Project.
17. Algonquin shall continue consultations with the operators of the Hibernia cable to attempt to reach an agreement regarding the proposed pipeline crossing of the cable and the long term maintenance and repairs of the pipeline and the Hibernia cable.